IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BOBBY WAGONER,	§	
Plaintiff,	§	
	§	
vs.	§	**CASE NO. 4:11-cv-385**
	§	
DENISON INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Defendant.	§	

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Bobby Wagoner, Plaintiff, and files this original complaint against Denison Independent School District (hereinafter "DISD"), Defendant, and would respectfully show the Court as follows:

I. PARTIES

1. Plaintiff is an individual residing in Grayson County, Texas.

2. Defendant Denison Independent School District is a governmental entity in Texas and may be served through its superintendent, Henry Scott, 1201 South Rusk Avenue, Denison, Texas 75020.

II. JURISDICTION

3. Jurisdiction is founded on federal question, specifically 42 U.S.C. §12111, *et seq*. ("The Americans with Disabilities Act of 1990", "the ADA"), as amended and 42 U.S.C. §12117, 12201-12204 and 12210 as such sections relate to employment.

4. All prerequisites to filing suit have been met.

III. FACTS

5. Plaintiff was employed by Defendant (DISD) for almost three years. She was employed in food service at the DISD's B. MacDaniel Middle School. On or about June 4, 2010, she was terminated.

6. On or about September 23, 2009, Plaintiff injured her arm/wrist while lifting a large mixer bowl. She filed a workers' compensation report with the DISD and went to the doctor. Plaintiff wore an arm brace but continued to do her job.

7. On or about March 25, 2010, the DISD offered Plaintiff a temporary modified work assignment that was within the restrictions her doctor outlined when he released her to return to work. Plaintiff accepted the offer.

8. Rhonda Hagan, the Dining Hall Manager at B. MacDaniel Middle School and Plaintiff's immediate supervisor, told her that she could no longer go to her doctor's appointments during working hours. Plaintiff would have to do that outside working hours. Ms. Hagan told Plaintiff they were too busy to accommodate her doctor's appointments.

9. In June 2010, Ms. Hagan asked Plaintiff to come in and sign papers before school was out for the summer so she could get on worker's compensation for the summer.

10. However, when Plaintiff got there to sign the papers, Zonia (Last Name Unknown) said Plaintiff was fired because she was sick too much. However, all of Plaintiff's written physician's notes had been accepted without comment by the Defendant.

11. Plaintiff was diagnosed with lupus at age 24. She also has back problems.

12. Subsequent to her hiring by the Defendant, Debbie Hosford, Food Service Director for DISD, told Plaintiff that if Ms. Hosford had known about Plaintiff's health problems she would not have

hired Plaintiff. But now that she was hired they could not fire her.

13. At the time of her termination, Plaintiff was earning $ 9.27 per hour for 40 hours per week plus overtime and benefits.

IV. FEDERAL CLAIMS FOR RELIEF AND DAMAGES

COUNT I

14. Violations of The Americans with Disabilities Act of 1990 ("ADA"), as amended

15. A. Plaintiff is alleging that she was discharged in violation of The Americans with Disabilities Act of 1990, as amended, protecting Plaintiff from discrimination in the workplace on the basis of her disability or perceived disability.

16. B. Plaintiff claims all relief, legal and equitable, that effectuate her rights under The Americans with Disabilities Act, as amended.

17. C. Plaintiff requests reasonable attorney's fees as permitted under The Americans with Disabilities Act, as amended.

18. D. On or about October 8, 2010, Plaintiff filed a written complaint with the U.S. Equal Employment Opportunity Commission. On May 13, 2011, she received the Notice of Right to Sue from the U.S. Equal Employment Opportunity Commission, which was dated May 12, 2011.

V. PENDANT STATE CLAIMS

19. A. Violations of V.T.C.A. LABOR CODE §451, *et seq*.

20. Plaintiff would show that she has been discriminated against because she, in good faith, filed a claim with the Texas Industrial Accident Board under the V.T.C.A. LABOR CODE §451, *et seq.* Such discrimination is without just cause and amounts to unlawful discrimination in violation of V.T.C.A. LABOR CODE §451, *et seq.*, which such act was a proximate cause of Plaintiff's damages.

21. B. Vicarious Liability

22. At all times relevant hereto, Plaintiff would show that Defendant was liable for the wrongful acts of its agents, employees, and/or representatives pursuant to the doctrine of vice-principal and the principles of agency.

VI. DAMAGES

23. Plaintiff would show that as a result of Defendant's wrongful conduct, she has suffered damages in an amount that is within the jurisdictional limits of this Court. Plaintiff claims all relief at law and in equity pursuant to The Americans with Disabilities Act of 1990, as amended, and TEX. LABOR CODE §450.01, *et seq*.

VII. EXEMPLARY DAMAGES

24. Plaintiff would show that Defendant's conduct as set forth herein was done with malice and committed knowingly, intentionally and/or in a conscious disregard for Plaintiff's rights justifying the imposition of punitive damages in an amount no less than three times Plaintiff's actual damages.

25. Plaintiff would show that as a result Defendant's discriminatory conduct, as set forth herein, she has suffered grave and extreme damages; and that Defendant's conduct, in the nature of discrimination against her, was intentional, willful, wanton, and perpetrated upon her with total disregard for her rights as an employee. Further, Plaintiff states that she was a valuable employee of the Defendant, and that Defendant benefited from her long hours and steady work as an employee. Defendant's conduct in terminating Plaintiff's employment because she sustained an injury in the scope of her employment and subsequently filed a workers' compensation claim was done with malice and to discourage other employees from filing such claims.

VIII. ATTORNEY'S FEES

26. Plaintiff would show that, as a result of Defendant's wrongful conduct as set forth herein, she is entitled to reasonable and necessary attorney's fees.

IX. JURY DEMAND

27. Plaintiff requests that this matter be tried before a jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that upon final hearing hereof, Plaintiff have judgment against Defendant for actual damages in an amount within the jurisdictional limits of the Court together with interest on said amount at the highest rate allowed by law; mental anguish; punitive damages; reasonable attorney's fees; costs of court; prejudgment and postjudgment interest; and any and all further relief, at law or in equity, general or special, to which Plaintiff may show herself justly entitled.

Respectfully submitted,

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/s/ Ronald R. Huff____________________
Ronald R. Huff (SBN 10185050)

ATTORNEY FOR PLAINTIFF